

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Implementation of Sections 12 and 19  
of the Cable Television Consumer  
Protection and Competition Act of 1992

MM Docket No. 92-265

Development of Competition and  
Diversity in Video Programming  
Distribution and Carriage

REPLY OF LIBERTY MEDIA CORPORATION  
TO OPPOSITIONS TO ITS PETITION FOR RECONSIDERATION

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July 28, 1993

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Liberty Media Corporation ("Liberty Media") replies to the oppositions of the Wireless Cable Association International, Inc. ("WCA"), DirecTV, Inc. ("DirecTV"), and GTE Service Corporation ("GTE") to its Petition for Reconsideration ("Petition"). Rather than responding to the specific statutory language, excerpts from the legislative history, and empirical evidence upon which Liberty Media relies in seeking reconsideration, the oppositions simply repeat prior assertions of purported Congressional findings for which no support exists.

No party has opposed Liberty Media's requests on reconsideration that the Commission: (1) extend the provisions of its rules protecting the confidentiality of commer-

and (2) require buying groups to provide meaningful financial commitments to support their programming purchases (Petition at 14-15). Liberty Media respectfully submits that the absence of any opposition to these requests confirms that the relief sought by Liberty Media is not only reasonable, but also non-controversial.

The alternative distribution media oppose two of Liberty Media's requests for reconsideration. First, they support the Commission's determination that complainants need not make a threshold showing of harm for alleged violations of its rules under Section 628(c) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). Second, they assert that the broad attribution standard adopted by the Commission is justified. However, their oppositions provide no additional record support for the Commission's rulings.

A. Unsupported Presumption Of Harm

To support the Commission's conclusion that the practices prohibited by Section 628(c) are "implicitly harmful" and require no threshold showing of harm, WCA concludes authoritatively that:

Congress has already found that unless justified by the specific considerations it found relevant and enumerated in Section 628(c), conduct specified in Section 628(c) is actionable regardless of whether it precludes competition, and relief is always warranted."

WCA Opposition at 11. In support of these comprehensive Congressional findings, WCA cites its original comments at 36. Id. at n.29. Those comments simply restate the same assertion without any support. Comments of WCA, filed in MM Docket No. 92-265 on January 25, 1993, at 36. Likewise, DirecTv simply asserts, without reference to the legislative history, that "Section 628(c) identifies certain specific types of anticompetitive behavior that have been legislatively found by Congress to cause competitive harm, and that therefore require no additional threshold showing of 'harm'...."<sup>1</sup> DirecTv Opposition at 3.

Contrary to the Commission's conclusion that Section 628 is somehow ambiguous, the statute clearly states that the "regulations required" under Section 628(c) are to implement the basic prohibition of Section 628(b). The standing requirement in Section 628(d) states that the complainant must be "aggrieved" by the conduct which allegedly constitutes a violation of Section 628(b) or the Commission's regulations

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<sup>1</sup> Although opposing Liberty Media's petition for reconsideration, GTE acknowledges that the Commission's decision is internally inconsistent and requires further clarification. GTE Opposition at 7-10. GTE's opposition is premised on unspecified "ambiguities of Section 628 as a whole." Id. at 7. Even under GTE's interpretation, however, the Commission should make clear that there exists, at most, a "rebuttable presumption of harm" for conduct allegedly violative of Section 628(c). Id. at 9.

under Section 628(c).<sup>2</sup> In enacting the 1992 Cable Act,  
Congress made numerous "findings" and "declarations." See  
1992 Cable Act, Section 2. Despite such findings and the  
voluminous legislative history of the 1992 Cable Act, neither

interpretation which presumes the existence of harm --  
an interpretation which runs counter to the language of  
Section 628.

B. All-Encompassing Attribution Standard

The intent of the Commission's attribution standard  
should have been to identify those circumstances where cable  
operators have both the incentive and the ability to cause a  
programmer to engage in the kind of discrimination prohibited  
by Section 628. Without the ability to discriminate, there  
~~is no basis for distinguishing programming services in which~~

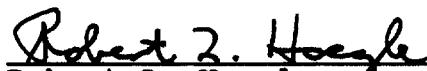
In opposing Liberty Media's Petition for Reconsideration, WCA and DirecTV claim that a "control" standard is inappropriate but do not explain why an interest in an entity controlled by another should be attributable. WCA Opposition at 16-20; DirecTV Opposition at 5-7. Thus, even if the Commission does not reconsider its conclusion regarding the level of ownership at which a cable operator can cause a programmer to engage in discriminatory conduct, it should adopt the exceptions recognized under the broadcast attribution standards. At a minimum, the Commission should incorporate the single majority shareholder, limited partnership, and non-voting shareholder exceptions.

#### Conclusion

For the foregoing reasons, Liberty Media respectfully requests that the Commission grant each of its four requests for reconsideration -- two of which are unopposed.

July 28, 1993

Respectfully submitted,



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CERTIFICATE OF SERVICE


I hereby certify that copies of the foregoing "Reply of Liberty Media Corporation to Oppositions to Its Petition for Reconsideration" were served this 28th day of July, 1993 by first-class mail, postage prepaid, upon the following:

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